IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 16049 of 2004

Between:

T.Janaki Rama Rao, s/o Sri Mattapalli Rao,
R/o Garidepalli Village and Mandal, Nalgonda District.

..... PETITIONER

AND

1 The Government of A.P., rep., by District Collector-Nalgonda, Nalgonda District.
2 Government of A.P., rep., by its Secretary-Irrigation and Command Area Development, Secretariat, Hyderabad.
3 The Superintending Engineer, O&M Circle, Nagarjuna Sagar Left Canal, Nalgonda, Nalgonda District.
4 The Executive Engineer, Minor Irrigation Division-I.B.Division, Nalgonda, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or writ particularly one in the nature of writ of mandamus or any other appropriate writ i) declaring the proceedings of the District Collector No.D8/5794/2004 dated 12-5-2004 as illegal, biased and arbitrary (ii) declaring that the petitioner is entitled for compensation due to submergence of his lands to an extent of Ac.5.30 guntas in Survey No.684, 685 and 695 of Garidepalli Village and Mandal, Nalgonda District and consequently direct the respondents to award the compensation to which the petitioner is entitled to, together with interest, mesne profits and pass

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondents: GP FOR LAND ACQUISITION

The Court at the stage of admission made the following ORDER:

The petitioner, who claims to be the owner of the land of an extent of Ac.5.30 guntas in Survey Nos.684, 685 and 695 situate at Garidepalli village and Mandal, Nalgonda district, filed the present writ petition questioning the proceedings of the District Collector, Nalgonda, dated 12.05.2004 as illegal, biased and arbitrary and for consequential direction to the respondents to award the compensation due to submergence of the lands.

The petitioner earlier filed W.P.No.15842 of 2003 questioning the proceeding dated 31.05.2003, which was issued to the petitioner informing that since the level of the Tank bed or weir of the Tallacheruvu tank was not raised, the land of the petitioner was not subjected to submergence and as such the question of payment of compensation does not arise. The said writ petition was allowed on 11.02.2004 by setting aside the impugned memo directing the second respondent-District Collector, Nalgonda, to consider the matter afresh, taking into account his own letter dated 10.02.1995 and if any view different from the one in 10.02.1995 is proposed to be taken, the second respondent shall record specific reasons in support of such a view. Pursuant to the said order passed by this Court, the Joint Collector was requested to inspect the spot and report the facts. Accordingly, the Joint Collector inspected the spot on 04.05.2004 along with the concerned officers, after duly informing the petitioner well in advance. The petitioner, Sarpach of the village and Ayacutdars were also present at the time of inspection by the Joint Collector and on such inspection the Joint Collector submitted a report to the District Collector, Nalgonda. Basing upon the report, the District Collector passed the impugned order that as per the levels fixed by the Irrigation Officials, the suit land will not come into submergence zone of the tank at full reservoir level. But, whenever the tank over flows over and above the full reservoir level, Sy.No.694 will come under submergence. Neither the bund nor the weir of the tank are raised to store additional

water after commanding NS Canals and the tank was constructed about 200 years back, which was constructed during Nizam's rule and thus the submergence is not new after commanding of NS Canals only. Since the petitioner was worked as Patwari of Garidepalli village for a long time, he himself recorded sahara in the pahani that the suit lands are submerged during the year 1967-68. In view of the same, and as there is no water in the tank for the last two years as water is not released from NS Canals and the suit land is out of submergence, the petitioner has not cultivated it. In view of the same, the submergence is not new after commanding of NS Canals and the petitioner is not entitled for any compensation.

Since cogent reasons were given, based upon the inspection report, when the land in Survey Nos.684, 685 and 695 was not submerged and even earlier to the same, the land was used to be submerged as and when the tank over flows over and above the FR level, the petitioner is not entitled for any compensation.

If the petitioner is aggrieved by the reasons mentioned in the impugned order, which are disputed questions of fact, which cannot be gone into in this writ petition filed under Article 226 of the Constitution of India, the petitioner, if suffered any loss due to submergence of the land, he is at liberty to move competent civil Court for damages and produce all such evidence.

The writ petition is accordingly disposed of. No costs.

_____

A. Gopal Reddy, J

Date: 09.09.2004

va